

§ 996.22

or waive the compliance tests for a hydrographic product. This alternative may be used, for example, when there is no qualified entity to perform the compliance tests, where the compliance tests are simple, or when self-certification of compliance would be appropriate.

(c) Items failing the compliance tests may be changed by the applicant and retested. Items passing the compliance test upon retest shall be deemed compliant as if they had passed said tests initially.

§ 996.22 Certification.

(a) A hydrographic product that has passed the compliance tests shall automatically be considered for certification by NOAA. NOAA shall make its certification determination, if its other obligations permit, within 60 calendar days following receipt of the compliance test results. NOAA shall make a certification determination based upon the following criteria:

- (1) The results of the compliance tests;
- (2) The potential for the hydrographic product to impair public safety;
- (3) Successful completion of any administrative requirements, including the payment of required fees, as may be specified by NOAA;
- (4) The potential for certification to cause embarrassment to the Agency or the Department;
- (5) Other relevant criteria as they become apparent.

(b) Hydrographic products receiving a certification determination in the affirmative shall be designated as "certified" by NOAA. NOAA shall provide a written document to the sponsor indicating such, and shall announce its determination in the FEDERAL REGISTER or by other appropriate means. Certification shall mean that the hydrographic product has been found to be in compliance with the NOAA-adopted standard for that hydrographic product or class. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and con-

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veys no automatic, direct or indirect NOAA endorsement of any product or service.

(c) Certification shall be for a term of 3 years unless otherwise specified by the Administrator.

(d) A certification may be renewed, at the request of sponsor and the option of NOAA, for a period of 2 years. Sponsors may request the renewal of a certification by writing to the Quality Assurance Program address at least 120 calendar days before the expiration of an existing certification. The request shall include:

- (1) Identifying and contact information for the sponsor;
- (2) Identifying information for the relevant hydrographic product(s) and the standard(s) under which they were certified;
- (3) Evidence sufficient to assure NOAA that the hydrographic product still meets the standard under which it was certified; and
- (4) Other information as may be requested by NOAA.

(e) NOAA shall decide within 60 calendar days, if its other obligations permit, whether to renew a certification. NOAA's decision shall be based on whether the hydrographic product continues to meet the applicable standard, and other relevant criteria as they become apparent.

(f) The sponsor shall have an opportunity to request reconsideration of NOAA's decision. Said request shall be submitted in writing, to the Quality Assurance Program address, post-marked within 30 days of NOAA's announcement of its decision, and shall contain written material supporting the requestor's position. NOAA shall have, if its other obligations permit, 30 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(g) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

§ 996.23 Audit and decertification of hydrographic products.

(a) NOAA may audit hydrographic products it has certified. NOAA may

conduct audits without advance notification. However, visits to companies' facilities will be scheduled. Audits may include, but are not limited to:

- (1) The producing companies as it may affect the certified product;
- (2) Certified products;
- (3) Processes used in making, distributing, and marketing certified products;
- (4) Use of the NOAA emblem;
- (5) Examination of manufacturers' public claims about certified hydrographic products;
- (6) Other relevant criteria as they become apparent.

(b) NOAA may decertify a hydrographic product based on the findings of an audit. In general, a hydrographic product may be decertified if:

- (1) The results of an audit indicate that the product no longer meets the standards under which it was certified;
- (2) The product has been substantively changed from the product that was tested and certified;
- (3) Implied or actual claims about the product, and/or other data or products linked to the product, are judged by NOAA to be untrue or misleading;
- (4) The NOAA emblem was improperly or inappropriately displayed;
- (5) Other relevant reasons as they become apparent.

(c) A producing company may decline to reveal information during an audit that it declares to be proprietary or for other reasons. In this eventuality, NOAA reserves the right to decertify based on lack of information should it deem that action appropriate.

(d) The entity producing the certified hydrographic product shall be notified in writing of NOAA's intent to decertify that product. Said entity shall have 30 days to request reconsideration of that intended action in writing to the Quality Assurance Program address. Said request shall contain the identification of the hydrographic product, the requestor, and sufficient information for NOAA to make a determination on the request for reconsideration. Alternatively, the entity may correct the deficiencies cited by NOAA within 30 days, notify NOAA in writing at the Quality Assurance Program address of the corrective action taken, and provide sufficient evidence for

NOAA to judge the correctness and effectiveness of the corrective action taken.

(e) If a request for reconsideration is submitted, or if the producing entity asserts that the deficiencies have been corrected, NOAA shall have 60 calendar days, if its other obligations permit, to consider the request for reconsideration or the corrective action, at which time NOAA shall issue its decertification decision. The decision and NOAA's reason for its action shall be made public in the FEDERAL REGISTER or by other appropriate means, and the producing entity shall be notified in writing.

(f) NOAA's decertification, if unappealed or uncorrected within 30 days, shall be considered final. NOAA shall notify the producing entity of this action in writing, and announce the decertification in the FEDERAL REGISTER or by other appropriate means.

(g) Upon decertification, manufacturers shall discontinue all claims of certification, and shall discontinue use of the NOAA emblem.

Subpart D—Other Quality Assurance Program Matters

§ 996.30 Use of the NOAA emblem.

(a) Use of the NOAA emblem on certified hydrographic products requires separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency or the Department. If the NOAA emblem is used on products that include other data or products, clear indication shall be made as to what is NOAA certified, and what is not NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA. Requests for use of the NOAA emblem shall be submitted in writing to the Quality Assurance Program address, and shall include:

- (1) Name and description of the hydrographic product(s) on which the emblem will be displayed.
- (2) Name and contact information for the entity requesting use of the NOAA emblem.